

MICHAEL NEMETH

IBLA 94-79      Decided February 24, 1997

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring placer mining claims abandoned and void. ORMC 088191 and ORMC 088192.

Affirmed.

1. Mining Claims: Abandonment! ! Mining Claims: Rental or Claim Maintenance Fees: Generally

"Filed" is defined in 43 CFR 3833.0-5(m) (1993) to mean "being received and date stamped in the proper BLM office." Although that regulation specified a 15-day grace period for the filing of affidavits of assessment work and notices of intention to hold mailed to the proper BLM office in an envelope clearly postmarked by the United States Postal Service within the period prescribed by law, it expressly excluded rental fee filings and exemption certificate filings from its purview. Thus, rental fees received by BLM on Sept. 1, 1993, in an envelope postmarked Aug. 30, 1993, are untimely filed.

APPEARANCES: Michael Nemeth, pro se.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Michael Nemeth has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated October 25, 1993, declaring the Honeysuckle (ORMC 088191) and New-U (ORMC 088192) placer mining claims abandoned and void <sup>1/</sup> because appellant failed to pay rental fees for the claims for the 1993 and 1994 assessment years on or before August 31, 1993, as required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Appropriations Act), P.L. 102! 381, 106 Stat. 1378! 79 (1992), and its implementing regulations, 43 CFR 3833.0-5 and 3833.1! 5 through 3833.1! 7 (1993).

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<sup>1/</sup> The claims, which are situated in sec. 17, T. 38 S., R. 5 W., Willamette Meridian, Josephine County, Oregon, were located on July 7, 1986.

A provision of the Appropriations Act established that

for each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work requirements contained in the Mining Law of 1872 (30 U.S.C. 28! 28e), and the filing requirements contained in section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c)), each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993 in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993 \* \* \*.

106 Stat. 1378. The Appropriations Act also contained an identical provision establishing rental fees for the assessment year ending at noon on September 1, 1994, requiring payment of an additional \$100 rental fee on or before August 31, 1993. Id.

Congress further mandated that "failure to make the annual payment of the claim rental fee as required by this Act shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant \* \* \*." 106 Stat. 1379.

Implementing Departmental regulations provided as follows:

Mining claim or site located on or before October 5, 1992. A nonrefundable rental fee of \$100.00 for each mining claim, mill site, or tunnel site, shall be paid on or before August 31, 1993, for each of the assessment years beginning on September 1, 1992, and September 1, 1993, or a combined rental fee of \$200.

43 CFR 3833.1! 5(b) (1993).

The only exemption provided from this annual rental requirement was the so-called "small miner's exemption," available to claimants holding 10 or fewer mining claims, mill sites, or tunnel sites on Federal lands who were required to meet all the conditions set forth in 43 CFR 3833.1-6(a) (1993). William B. Wray, 129 IBLA 173 (1994). If a claimant chose not to pay the rental fees and instead elected to seek an exemption, the regulations required the filing of a "separate statement \* \* \* supporting the claimed exemption for each assessment year [it] is claimed" on or before August 31, 1993. 43 CFR 3833.1! 7(d) (1993).

On appeal, appellant explains that he mailed a check dated August 30, 1993, in the amount of \$210 for the rental fees and service charges, which was accompanied by affidavits of annual assessment work on both claims for the year ending September 1, 1993, in the belief that BLM would apply the so-called "post mark rule" of 43 CFR 3833.0-5(m) (1993). In addition,

appellant expressed an intention to "claim a[n] exemption for the 1994 assessment year for both claims." <sup>2/</sup> The envelope was postmarked August 30, 1993, and received by BLM on September 1, 1993.

[1] In 43 CFR 3833.0-5(m) (1993), the Department defined "filed" to mean "being received and date stamped by the proper BLM office." Although that regulation specified a 15-day grace period for the filing of FLPMA affidavits of assessment work and notices of intention to hold mailed to the proper BLM office in an envelope clearly postmarked by the United States Postal Service within the period prescribed by law, it expressly excluded rental fee filings and exemption certificate filings from its purview. <sup>3/</sup> Notwithstanding the express language of the regulation, however, appellant argues that the 15-day grace period should be extended to the payment of rental fees for consistency's sake.

We must affirm BLM's decision. Appellant's August 30 letter and payment were not received and date stamped by the Oregon State Office on or before August 31, 1993. Thus, under the applicable regulation payment was untimely. See William Harding, 130 IBLA 90, 91 (1994). <sup>4/</sup> As a

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<sup>2/</sup> Appellant's letter contained some of the information required by the regulations to establish entitlement to a small miner exemption under the Appropriations Act, but the letter did not fully comply with such requirements. However, 43 CFR 3833.4(b) (1993) provided:

"Unintentional failure to file the complete information required in \* \* \* [43 CFR] 3833.1! 7 (d) [(1993)] \* \* \*, when the document is otherwise filed on time, shall not be deemed conclusively to constitute an abandonment of the claim \* \* \*, but such information shall be filed within 30 days of receipt of a notice from the authorized officer calling for such information. Failure to file the information requested by the decision of the authorized officer shall result in the mining claim \* \* \* being deemed conclusively to be abandoned and it shall be void."

We need not reach the question of the applicability of this regulation in light of the untimely filing of the rental fees.

<sup>3/</sup> The regulation stated: "This 15 day period does not apply to filings made pursuant to [43 CFR] §§ 3833.1-2 [recordation of mining claims, mill sites and tunnel sites located after Oct. 21, 1976], 3833.1! 5 [rental fees], or 3833.1! 7 [filing requirements for rental fee exemptions] [(1993)]."

<sup>4/</sup> In section 10101 of the Omnibus Budget Reconciliation Act of 1993 (Omnibus Act), 30 U.S.C. § 28f (1994), Congress required the filing of a \$100 maintenance fee for all unpatented mining claims on or before Aug. 31 of each year from 1994 through 1998. It also allowed for the filing of certificates for exemption from the requirement in certain circumstances. In regulations promulgated to implement the Omnibus Act, the Department revised 43 CFR 3833.0! 5(m) to extend the 15-day grace period to maintenance fees and certificates for exemption filed under the Omnibus Act. The revised regulations are not applicable to Appropriations Act filings. Thus, there can be no retroactive application of revised 43 CFR 3833.0-5(m) to Appropriations Act filings. Kathleen K. Rawlings, 137 IBLA 368, 372 (1997).

consequence, the claims at issue were extinguished by operation of law when appellant failed timely to pay the appropriate rental fees or file qualifying certificates claiming exemption from the rental fee requirement on or before August 31, 1993. See Nannie Edwards, 130 IBLA 59, 60 (1994), and cases cited therein.

We are without authority to excuse lack of compliance with the Appropriations Act and its implementing regulations, to extend the time for compliance, or to afford any relief from the statutory consequences. Lester W. Pullen, 131 IBLA 271, 273 (1994). BLM properly declared the claims abandoned and void.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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T. Britt Price  
Administrative Judge

I concur.

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C. Randall Grant, Jr.  
Administrative Judge

